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6 Attorneys for Defendant,  
MALTON LLC dba MATO & HASH  
7

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 THIRTY THREE THREADS, INC., a  
California corporation,

12 Plaintiff,  
13

14 vs.  
15

MALTON LLC, a Michigan limited  
16 liability company doing business as  
MATO & HASH; and DOES 1-10,  
inclusive,

17 Defendant.  
18

CASE NO. 3:15-CV-2609-JAH-  
JMA

**ANSWER TO COMPLAINT BY  
DEFENDANT MALTON LLC  
DBA MATO & HASH**

1 Defendant Malton LLC dba Mato & Hash (“Malton”) hereby answers the  
2 Complaint by Plaintiff Thirty Three Threads, Inc. as follows. For ease of reference,  
3 Malton responds using the same paragraph numbers and headings as used in the  
4 Complaint.

5 **PARTIES**

6 1. Malton is without knowledge or information sufficient to form a belief  
7 as to the truth of the allegations and therefore denies them.

8 2. Admitted.

9 3. Malton is without knowledge or information sufficient to form a belief  
10 as to the truth of the allegations and therefore denies them.

11 4. Denied.

12 5. Denied.

13 6. Denied.

14 **JURISDICTION AND VENUE**

15 7. Malton admits that this action purports to arise under the patent laws  
16 of the United States. Malton denies that personal jurisdiction is proper in this  
17 District.

18 8. Denied.

19 **BACKGROUND OF THE CONTROVERSY**

20 9. Malton is without knowledge or information sufficient to form a belief  
21 as to the truth of the allegations and therefore denies them.

22 10. Malton admits that the ‘935 is generally directed to foot apparel but is  
23 without knowledge or information sufficient to form a belief as to the truth of the  
24 remaining allegations and therefore denies them.

25 11. Malton admits that on January 28, 2015, Barry Buchholtz (who Malton  
26 understands is the President of Thirty Three Threads, Inc.) ordered a pair of  
27 Malton’s accused product online via Amazon.com. Malton admits the accused  
28 product was sold under the name “Mato & Hash.” Malton is without knowledge or

1 information sufficient to form a belief as to the truth of the remaining allegations  
2 and therefore denies them.

3 12. Denied.

4 13. Denied.

5 **FIRST CLAIM FOR RELIEF**  
6 **(Patent Infringement of U.S. Patent No. 7,346,935)**

7 14. Malton admits that Plaintiff repeats and realleges the allegations of  
8 paragraphs 1 through 13.

9 15. Malton is without knowledge or information sufficient to form a belief  
10 as to the truth of the allegations and therefore denies them.

11 16. Denied.

12 17. Denied.

13 18. Denied.

14 19. Denied.

15 20. Denied.

16 21. Denied

17 22. Denied.

18 **PRAYER FOR RELIEF**

19 Malton denies that Plaintiff is entitled to any of the relief requested in its  
20 Prayer for Relief, or at all.

21 **DEMAND FOR JURY TRIAL**

22 Malton does not object to a trial by jury of all issues so triable.

23 **AFFIRMATIVE DEFENSES**

24 As and for its affirmative defenses, Malton asserts the following below.  
25 Malton does not hereby assume the burden of proof with respect to any matters on  
26 which Plaintiff bears the burden of proof by law. Malton reserves the right to  
27 amend, modify or supplement its affirmative defenses.  
28

**FIRST AFFIRMATIVE DEFENSE**

(Failure to State a Claim)

1  
2 1. Plaintiff's Complaint fails to state a claim upon which relief may be  
3 granted.

**SECOND AFFIRMATIVE DEFENSE**

(Waiver, Estoppel, Laches, Acquiescence, and Unclean Hands)

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5  
6 2. Plaintiff's claims are barred in whole or in part by the doctrines of  
7 waiver, estoppel, laches, acquiescence, and unclean hands.

**THIRD AFFIRMATIVE DEFENSE**

(No Injunctive Relief)

8  
9  
10 3. Plaintiff's claims for injunctive relief are barred because Plaintiff has  
11 not suffered and is not suffering irreparable harm, the balance of hardships tips in  
12 favor of Malton and because Plaintiff has an adequate remedy at law.

**FOURTH AFFIRMATIVE DEFENSE**

(Prosecution History Estoppel)

13  
14  
15 4. Plaintiff's claims are barred in whole or in part by the doctrine of  
16 prosecution history estoppel.

**FIFTH AFFIRMATIVE DEFENSE**

(Prior Commercial Use)

17  
18  
19 5. Malton does not infringe any claims of the asserted patent under 35  
20 U.S.C. §273.

**SIXTH AFFIRMATIVE DEFENSE**

(Limitations on Damages)

21  
22  
23 6. Plaintiff's claims and damages are barred in whole or in part by 35  
24 U.S.C. §§286, 287 and/or 288.

**SEVENTH AFFIRMATIVE DEFENSE**

(Lack of Personal Jurisdiction and/or Venue)

25  
26  
27 7. Plaintiff's complaint should be dismissed for lack of personal  
28

jurisdiction under Fed. R. Civ. P. 12(b)(2) and/or improper venue under Fed. R. Civ. P. 12(b)(3).

**EIGHTH AFFIRMATIVE DEFENSE**

(Non-Infringement)

8. Malton has not infringed and does not infringe any claim of the '935 patent, either directly, contributorily, or by inducement.

**NINTH AFFIRMATIVE DEFENSE**

(Invalidity)

9. Each of the asserted claims of the '935 patent is invalid and/or unenforceable for failure to satisfy one or more of the requirements of patentability set forth in 35 U.S.C. § 1 *et seq.*, including without limitation 35 U.S.C. §§ 100, 101, 102, 103 and/or 112.

**ADDITIONAL AFFIRMATIVE DEFENSES**

10. Malton reserves all other affirmative defenses pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, the Patent Laws of the United States, and any other defenses, at law or in equity, that now exist or in the future may be available based on discovery and investigation in this case.

DATED: April 17, 2017

Respectfully submitted,

By: /s/James V. Fazio, III

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